Question 1b.

Colorado River Needles Line 235 will have an anticipated flow of *98.0 Billion cu. ft. in 1980.

Colorado River Needles Line 3000 will have an anticipated flow of *180.0 Billion cu. ft. in 1980.

Colorado River Blythe Line 2000 will have an anticipated flow of *190.0 Billion cu. ft. in 1980.

Question 1c.

Potential LNG unloading site offshore deep water, Port Hueneme area.

Question 2.

We presently do not have any leases where easement charges are based on throughput.

Question 3a.

None

Question 4a.

None

Question 4b.

This question would be impossible to answer. *All* government installations in our serving area have their own service and metering facilities. The rates are filed with the C.P.U.C.

Question 4c.

No variance of rates. The applicable rate as filed with the C.P.U.C. will prevail.

Question 5a.

All of our pipelines and facilities fall under the jurisdiction of C.P.U.C.

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*These estimated calculations are based on present known supplies.

Question 5b.

No answer. Does not apply.

Question 5c.

No answer. Does not apply.

Question 6.

The 1976 renewal for Line 2000 in Blythe will increase our costs from $780 for 15 years to an annual cost of $360,000.

The estimated costs for unloading the LNG at Oxnard (Port Hueneme) will cost $306,600.

Question 7.

Upon request we will review and determine at that time what data and/or agreements can be released that are not already a matter of Public Record.

RESPONSE OF SHELL OIL COMPANY

October 10, 1975

Mr. Gary R. Horn
Land Agent
State Lands Commission
1807 13th Street
Sacramento, California 95814

Dear Mr. Horn:

This has reference to your letter of June 19, 1975, File W 5125.1, concerning questions posed to Shell Oil Company on the subject Commission Leasing Rental based on "throughput".

We regret your June 19 letter was misdirected to one of Shell's field offices and did not come to our attention until recently.

Attached is Shell's response to the questions raised in Attachment B to your letter. We have attempted to answer them to the best of our ability based upon our present knowledge of Shell's present activity and future plans.

Please especially bear in mind our comments concerning Question 7 regarding assurance of adequate confidentiality before release of pertinent data.

If we can be of further assistance, please let us know.

Yours very truly,

/s/ W. J. GRILLOS
Manager, T&S Pipe Lines—
West Coast Division

1a. Attachment I identifies the geographic area, State Lands Commission lease number, and the estimated annual volume of petroleum products crossing lands under the SLC's jurisdiction insofar as it leases to Shell Oil Company are concerned. The volumes shown are based upon actual figures for the first three months of 1975 projected at the same rate for the entire calendar year.

1b. Due to uncertainties under present and future federal and state statutes and regulations, in the economy, and in our own operations, no meaningful forecast can be made as to projected volumes through 1980.

1c. For the same reasons enumerated in 1.b above, we cannot project additional facilities which might come under State Lands Commission jurisdiction within the next five years. However, Shell does have one current project to transport low quality natural gas from the Sacramento area to Shell's Martinez refinery. Shell has applied to the California State Lands Commission for the necessary permits. Attachment I does not include the details as this application is not final.

2. We have no ground leases (i.e., leases where the lessee is given no right to use improvements owned by the lessor) occupied by any of our pipeline facilities, for which we are currently paying rent based on throughput. We do, however, pay dock fees to the Port of Los Angeles based on throughput of petroleum products unloaded from vessels at dock facilities owned by the Port. These wharfage charges, however, are covered by a published tariff (refer to Item 415 A-31, Port of Los Angeles Tariff No. 3), and are an acknowledged and equitable way for the Port to recover from the various users of such facilities a reasonable rate of return on the Port's significant capital investment therein. We also pay throughput charges to the City and County of San Francisco where our lease gives us the right to use the lessor's wharf facilities.

3a. The substance of the questions posed herein relates to land usage for pipeline and related purposes, so we have assumed that the reference to facilities in this question is intended to refer to leases of land rather than improvements or facilities. Shell has no California ground leases to third parties based on throughputs.

4a. Shell Oil Company has no facilities under State Lands Commission jurisdiction which are operated solely for the convenience and purpose of supplying petroleum products to a governmental agency, although some of them have been or are involved to some degree in handling products supplied on occasion to a government agency or used to manufacture such products.

4b. Shell Oil Company has no facilities not under SLC jurisdiction which are operated solely for the convenience and purpose of supplying petroleum products to a governmental agency. As previously stated in 4a above, however, virtually all of our facilities have been or are involved to some degree in handling products supplied on occasion to a governmental agency or used to manufacture such product.

4c. We do not understand this question.

5a. Shell Oil Company has no pipeline facilities in California regulated by the ICC and/or the CPUC.

5b. Not applicable.

5c. Not applicable.

6. A throughput rental rate of the magnitude proposed would have the immediate effect of increasing our pipeline operations cost in California by an estimated $800,000 annually—a cost that will ultimately be borne by the consumers, largely Californians. Further, we have many more leases with other governmental entities, such as cities and counties, as well as private landowners, than with the State Lands Commission, and the imposition of a throughput rental rate for pipeline operations across State Lands could lead such entities to demand the same terms in any future negotiations for new leases or renewal of existing

leases. Such an occurrence could increase our costs of operation by several millions of dollars per annum—a cost, as previously stated, which would ultimately have to be borne by the consumer.

7. Because we regard our agreements with other parties as confidential, our policy is against voluntary disclosure of any information concerning them. Whether or not we would make exception to that policy would depend on the nature of the particular information requested, and the assurances given for preservation of its confidentiality.

Attachment I

Summary of Existing State Land Commission Agreements

System	Permit	Area	Facility	Present Throughput
Ryer Island Gas Line (Suisun Bay)	PRC 3978.1 dated 5-1-68	12,789′ x 25′	12″ P/L 4″ P/L	28 MMCFD 40 b/d
Ryer Island Gas Line (Suisun Bay)	PRC 4303.1 dated 8-28-69	6,211′ x 25′	4″ P/L 3″ P/L	4 MMCFD
Bay Area Prods. Line (San Francisco Bay)	PRC 3291.1 dated 4-29-65	12,500′ x 50′	10″ P/L	16,354 b/d
Martinez Refinery	PRC 4908.1 dated 8-1-74	20 ± Acs.	Wharf & 18 P/L	99,726 b/d

Note: Estimated throughputs based on January thru March 1975 averages.

STATE LANDS COMMISSION MEMORANDUM

DATED JULY 18, 1975

JAMES F. TROUT, Manager
Land Operations
via
1. L. L. Patton
2. L. H. Grimes

July 18, 1975

W 5125.1

STATUS OF THROUGHPUT RENTAL PROJECT

As of this date we have responses to our questionnaire from P. G. & E., Holly Corporation (Ozol Terminal) and Burmah Oil and Gas Company. I have received telephone calls from most of the companies who received the questionnaire, advising me that they were working on responses and would have something for us within a week or two.

In response to information received from P. G. & E., Jim Fiack and I visited the Port of San Francisco offices on Thursday, July 17th. We spoke with Mr. Harry J. Thiemann, Commercial Property Manager and his assistant, Mr. Reamers. According to information supplied by P. G. & E., the Port of San Francisco charges them a wharfage fee of 35¢ per ton (long) of fuel oil used in the Hunters Point and Petrero power plants. Our visit to the port was to confirm what services or benefits the port provided for the 35¢ wharfage fee.

Mr. Thiemann stated that both wharves were built by P. G. & E. (the Hunters Point facility was a trespass for some years). P. G. & E. maintains both sites without assistance from the Port of San Francisco. Mr. Thiemann stated that the port provides no benefits or services to P. G. & E. for either wharf facility. In addition to the 35¢ per ton wharfage fee, the port rents the wharf site to P. G. & E. for 2¢ per square foot per month (4,091 sq. ft.

m/l), plus a dockage fee in accordance with the published tariff.

In sum, it appears that the Port/P. G. & E. leases for the Hunters Point and Potrero wharves are identical situations under which the State Lands Commission administers its lands. The port now collects a "throughput" charge of approximately 5¢ per barrel for no services or benefits provided except the terminal site. We will explore this further with P. G. & E. at our upcoming meeting.

Meetings have been arranged with the utility companies (July 22, 1975, 1:30 p.m. Long Beach Office of the SLD); pipeline companies (July 23, 1975, 9:30 a.m., Long Beach Office of the SLD); W.O.G.A. and oil companies (July 31, 1975, 9:30 a.m., Office of the Attorney General in Los Angeles). We had hoped to have most of the responses before the meeting; however, it appears that most of the responses will be hand carried to the meetings.

Jim Fiack is now looking into the economic impact of the throughput rental on the rate-payers of the utilities. This information can only be developed after the meetings are held and the questionnaire responses analyzed.

I am available to discuss the details of the project at any time.

G. R. HORN
Land Agent

MATERIAL PROVIDED BY WESTERN OIL & GAS ASSOCIATION AT MEETING OF JULY 31, 1975 (1ST ITEM)

SUMMARY OF NON-EXTRACTIVE LEASES—WOGA COMPANIES

(Involving Flow of Petroleum and Petroleum Products)
(Excluding 49-Year Leases)

	Marine Terminals	Pipeline Rights of Way	Total
Number of Leases	18	21	39
Current Annual Rental	$ 231,000	$ 56,000	$ 287,000
New Minimum Annual Rental	355,000	86,000	441,000
Proposed Annual Throughput Rental (Based on Current Volumes)	5,821,000	2,348,000	8,169,000
Multiple Portion	1,400,000	800,000	2,200,000
Marine Terminals Investment and Expense Data:			
Gross Investment	$35,000,000		
Current Replacement Cost	126,000,000		
Annual Maintenance Cost	2,000,000		
Annual Dredging Cost	1,000,000		

MATERIAL PROVIDED BY WESTERN OIL & GAS ASSOCIATION AT MEETING OF JULY 31, 1975 (2D ITEM)

Build-Up of Throughput Rentals

	Cumulative Totals		
	Marine Terminals	Pipeline Rights of Way	Total
1975	$ 32,000	$ 974,000	[illegible],000
1976	1,266,000	974,000	2,240,000
1977	3,514,000	1,506,000	5,020,000
1978	3,514,000	1,888,000	5,402,000
1979	4,429,000	1,916,000	6,345,000
1980	4,429,000	2,169,000	[illegible],000
1981	4,429,000	2,319,000	6,748,000
1982	5,132,000	2,319,000	7,451,000
1983	5,132,000	2,348,000	7,480,000
1984	5,495,000	2,348,000	7,843,000
1985	5,795,000	2,348,000	8,143,000
1986	5,795,000	2,348,000	8,143,000
1987	5,795,000	2,348,000	8,143,000
1988	5,821,000	2,348,000	8,169,000

MATERIAL PROVIDED BY
WESTERN OIL & GAS ASSOCIATION
AT MEETING OF JULY 31, 1975 (3D ITEM)

Salient Points Regarding Major California Ports

1. Rentals for industrial sites leased from the ports is based on a return (e.g., 6%, 8% or 9%) on the appraised value of the land. No throughput rentals have been reported.

2. Besides income from the rental of land, the ports also receive income from wharfage fees levied against cargo transported across their docks, dockage fees levied against ships using the docks, and other similar fees for services and facilities provided by the ports.

3. The income derived by the ports is used to offset their substantial operating expenses and to recapture their substantial investment in port-owned facilities. An attempt to make a rate of return of roughly 1% on their investment has been mentioned.

4. Offsetting the need to derive income for the reasons noted above is the need for each port to remain competitive with other ports, which becomes another factor in determining their wharfage, dockage and other fees.

5. An informal control over the level of fees is maintained by the California Association of Port Authorities which seeks, to some extent, to achieve a general uniformity of fees among its member ports. Moreover, all fee schedules adopted by the ports must have the approval of the Federal Maritime Commission.

STATEMENT BY SOUTHERN CALIFORNIA GAS COMPANY DATED APRIL 21, 1976

Southern California Gas Company
Statement in Opposition to
Proposed Amendments to Title 2,
California Administrative Code,
Article 2. Wednesday, April 21, 1976

I am Reino J. Cortez, Manager of Environmental Affairs for the Southern California Gas Company. The Southern California Gas Company is an investor-owned natural gas utility serving a population of over 11 million in southern California.

At public hearings held last year on an earlier version of the proposed changes to the Commission's rental regulations, we expressed our opposition to certain of the amendments. We were opposed at that time to provisions relating to computing rental rates based upon the volume of commodities passing over State lands. Our detailed statement defining the basis for our opposition to the "throughput" concept was made on May 2, 1975 in Long Beach.

This latest version of proposed changes to Title 2, California Administrative Code, Article 2, again embodies provisions for rental fees for industrial and right-of-way leases based upon throughput volume. Conspicuously absent in this version of the proposed amendments are the fee schedules contained in the earlier version of the proposed changes.

We continue to be opposed to the "throughput" concept for the same reasons expressed in our previous statement of record. I feel it is important to briefly reiterate our major concerns.

We believe that the Commission by adopting, the "throughput" charge provision, runs a serious risk of es-

tablishing a dangerous precedent for other governmental jurisdictions to follow. The large majority of natural gas consumed in southern California is imported from out of state. Transmission pipelines delivering natural gas to southern California traverse not only lands within the jurisdiction of other states, but cross numerous areas within California which are under federal and local government jurisdictions. If these other governmental authorities were to adopt similar provisions for "throughput" charges in their lease and right-of-way agreements, Californians could well be burdened with inordinate costs for which they receive no benefit. Clearly the implications of this precedent setting provision are significant.

Next we feel that rental fees assessed by the State Lands Commission based upon throughput volumes have no correlation whatsoever to services rendered by the State. We can find no rationale for basing annual rental fees on throughput volumes for leases of unimproved lands where the State has made no capital expenditures which need be amortized nor where any operational or maintenance costs are incurred. The only rational and correct method for computing the annual lease fee for unimproved land is on the basis of the appraised value of the land.

Further, we are unconvinced that the provisions of the proposed changes will exclude multiple charges being assessed by the State on identical commodity volumes. Section 2007. (b) (1) of the proposed amendments provides that multiple charges will not be imposed on an "identical commodity for passage over the same State land over which it is again passing, provided the commodity is still in the same ownership . . . " Since California gas utilities frequently interchange gas supplies, these volumes could have repeat "passage over the same State land", resulting in multiple charges. In addition multiple charges would occur when the identical commodity crosses State lands at

more than one location under the same or different ownership.

For all the reasons given we feel that the "throughput" charge concept applied to leases of State lands is not in the best interest of the citizens of this State. It must be realized that "throughput" charges imposed upon the public utilities will be passed on to the utility customers. This occurring at a time when every effort is being made to compensate for spiraling energy costs.

The Southern California Gas Company urges the State Lands Commission to reject the "throughput" charge concept and continue to use their present methods for calculating annual rental fees.

STATEMENT BY F. R. HENREKIN DATED APRIL 21, 1976

Statement to the State Lands Commission
April 21, 1976

Mr. Chairman and Members of the Commission

Your agency are presently considering changes to the regulations governing the rental rates for pipelines passing over state lands.

It is proposed that rentals will be based upon the volume of commodities passing over state lands. We are opposed to the imposition of this proposed rate schedule.

California presently has a very unfavorable business climate and a serious unemployment problem. We are in competition with other states to locate job producing industry and the imposition of these additional rental costs will be a further deterrent to economic development in California. We cannot continue to impose additional costs upon business and expect to attract new firms who will produce jobs for California.

Through the remainder of this decade there will be twice as many people reaching age 20 and entering California's labor force as people leaving the job market by retirement, not taking immigration into account. It means that the state's economy must produce 170,000 new jobs annually just to stay even. Actions like this increasing the cost of doing business will be a further restraint to industrial and business growth and job opportunities in California and should be carefully evaluated. The additional costs cannot be absorbed by California firms and must be passed on as a cost of doing business. This will increase the cost of merchandise or services and the consumer will pay the cost. It is in reality an indirect tax.

F. R. Henrekin
Industrial Development
Consultant, Solano County
Industrial Development Agency

STATEMENT BY DEPARTMENT OF DEFENSE
MAILED APRIL 20, 1976

Before the State Lands Commission
of the State of California State Lands Division
Sacramento, California 95814

File No. W 5125.8

Proposed Changes to the Commission's Rental Regulations for Pipeline Rights of Way—2 Cal. Admin. Code, Sections 2006-2007—Volume of Commodity Rates

Comments of the United States Department of Defense

Comes now the Secretary of the Army, through duly authorized counsel on behalf of the United States Department of Defense (DOD) and files the following comments in the above-styled case.

The Interest of the Department of Defense

In its efforts to meet the nation's defense requirements, the Department of Defense has established, maintains and operates numerous military installations throughout the United States and within the State of California. In the State of California and western Nevada alone there are nine major air force bases utilizing jet fuels and other petroleum products which pass through pipelines located in the State of California. DOD estimates that some 9,285,000 barrels of petroleum products are shipped annually to its military installations through pipelines in California. Assuming that all or substantially all of the throughput charges proposed in this proceeding will be passed through to the shippers of petroleum products, it is estimated that the pipeline transportation costs of the Department of Defense will increase, as a result of the proposed regulations, by over $100,000 annually.

The Secretary of the Army has been designated as the single manager for all DOD transportation requirements,

including shipment of petroleum products. The Secretary exercises this function through the Military Traffic Management Command, a Department of Army Command responsible for insuring that DOD transportation resources are so organized and managed as to assure optimum responsiveness, efficiency and economy in support of the defense mission. In obtaining transportation services, DOD is required to select those means of transportation which will meet DOD requirements satisfactorily at the lowest over-all cost from origin to final destination. Department of Defense Directive 4500.9, 29 November 1971, 32 C.F.R. Accordingly, the Department of Defense is greatly concerned about any proposed regulations which might affect its ability to provide adequate petroleum transportation services to military installations in California and Nevada at the lowest over-all cost to the United States.

1. *The Revised Regulations Have Been Offered Under Circumstances and Time Constraints Which Unreasonably Limit Meaningful Comment by Interested Parties.*

DOD recognizes that the question of whether rental charges for pipeline rights of way should be based on throughput has been before the Commission for over a year. However, the announcement and scheduling of the most recent hearing on the Staff's revised proposal gives woefully inadequate time for consideration and presentation of views concerning this important matter. While the staff has had nearly a year to formulate their revisions to the original proposal, interested parties such as the Department of Defense have had less than 10 days notice of these revisions to prepare a response. As indicated above, the proposed charges are likely to have a substantial impact on DOD and certainly an equal, if not greater, impact on other major shippers of petroleum products, as well as upon the pipelines themselves. Under such circumstances it is imperative that those most directly affected be given full and complete opportunity to respond to these pro-

posals. DOD, for example, has had considerable experience in leasing techniques for Federal lands which might be helpful to the Commission, but such information cannot be developed within the abbreviated time frame given. Additionally, full assessment of the actual impact of the revised proposals on DOD transportation requirements and routing arrangements cannot be determined without a reasonable time to study these new proposals. DOD strongly urges that no action be taken on the revisions without affording interested parties additional time (at least 30 days) to review these proposals and an opportunity to present additional evidence based thereon.

2. *The Regulations Proposed, If Adopted, Unfairly Impose Increased Charges on Existing Pipeline Facilities Which Have No Practical Alternative To The Crossing of State Lands.*

The revisions offered by the staff appear to make no distinction whatsoever between the charges to be assessed for existing rights-of-way as opposed to new rights-of-way granted by the Commission. As the Commission is undoubtedly aware, many of the pipelines which may be subjected to the new charges have been in place, providing transportation services across state lands for many years. These pipelines represent large fixed investments in plant which cannot be relocated without prohibitive and wasteful expenditures. Additionally, some pipeline facilities were constructed primarily to service military facilities and could not be relocated without substantial disruption of defense fuel requirements. Undoubtedly many, or all, of the pipeline routings were determined in reliance upon existing state rental practices and under the assumption that such practices would remain relatively stable. Accordingly, any radical departure in the level or calculation of charges for the lease of state lands places an unreasonable burden on both pipeline and shipper since they are, in a very real sense, captive lessees, having no reasonable alternative to

the charges that the State proposes. In the case of new rights-of-way, the prospective lessee has the opportunity to take or leave the proposal and to plan pipeline routing accordingly. Such options are unlikely to exist for pipeline facilities already in place over state lands. In DOD's view it is incumbent upon the Commission to give considerable weight to this substantial commitment of facilities and the reliance by the pipelines upon long-standing rental practices. If the Commission determines that volume based rates are otherwise lawful, recognition of the inherently inequitable nature of the proposed volume charges on in-place facilities could be accomplished by exemption of existing pipeline leases from the volume charges and a judicious application of the charges in other cases.

3. *The Regulations Proposed Leave Unanswered Many Questions Concerning The Basis For Assessment of Volume Charges.*

The proposed regulations appear to offer the Commission three alternatives for the assessment of rental for rights-of-way and Section 2006.4 provides several factors which the Commission shall consider when determining which method shall be selected. Section 2006.4(c)'s enumeration of factors, however, raises more questions than it answers. Factors (1) and (2), as they relate to volume charges, appear to imply that volume charges are in part based on consideration of potential environmental damage which might be caused by pipeline operations. If volume charges are designed to compensate the State for the risk of possible environmental damage then the State should indicate the extent to which this affects or absolves the pipeline and developer of common law liability for damages to the leasehold. No indication is given as to the relative weights to be accorded these various factors and the list does not appear to allow, require, or accord consideration to the interests of either the carriers or shippers, particularly the historical reliance by the carrier on the use of

state lands under long-standing conditions. Further, there is no indication whether the Commission's choice of alternatives will be uniform for all state lands or may vary from lease to lease, a situation which would permit discrimination between and among different carriers.

4. *The Proposed Regulations Appear to Constitute an Unreasonable Burden on Interstate Commerce.* DOD concurs with the argument previously advanced by various other parties that, in the absence of evidence establishing a reasonable relationship between volumes of oil passing through a pipeline and the value of the land or services provided by the State, rental charges based on volume constitute an unlawful burden on interstate commerce. DOD has argued before the Interstate Commerce Commission and believes that it is that Commission's view that pipeline transportation of petroleum within a single state following interstate or foreign water carriage is in interstate commerce and subject only to I.C.C. jurisdiction. *United States Department of Defense v. Interstate Storage and Pipeline Corporation,* I.C.C. Docket No. 36217; *Monsanto Co. v. Alton Southern Ry. Co.,* 339 I.C.C. 319 (1971); *Osborne McMillan Elevator Co. v. M., St. P. & S.S.M.R. Co.,* 306 I.C.C. 155 (1959). Because the proposed volume charges are based on a commodity moving in interstate commerce, and in the absence of evidence establishing a link between the commodity volume and nature of the services provided by the lessor, such charges constitutes an unreasonable burden on interstate commerce.

Conclusion

It is obvious that the ultimate result of the volume charges proposed is to increase the costs of transporting petroleum in the State of California, costs which will be passed along to the users of such services. Unlike commercial businesses, the Department of Defense cannot pass increased costs on to customers who may choose or not choose to buy more expensive goods and services as they

see fit. With respect to petroleum volumes shipped by the U.S. Government, the increased charges proposed will be borne ultimately by the taxpayers, including the citizens of the State of California. The Commission should give careful consideration to this fact and to the other considerations raised herein.

Respectfully submitted,

/s/ Dellon E. Coker
Chief, Regulatory Law Office
Office of The Judge
Advocate General
Department of the Army
Washington, D. C. 20310
For
The Secretary of the Army

Cpt Paul M. Scott
Attorney
Of Counsel

[Certificate of service omitted in printing]

STATEMENT BY PACIFIC GAS & ELECTRIC COMPANY DATED APRIL 21, 1976

Statement of
Pacific Gas and Electric Company
by
J. Peter Baumgartner, Attorney
before the
Division of State Lands
April 21, 1976

INTRODUCTION

Pacific Gas and Electric Company (PGandE) opposes certain features present in the State Lands Commission (SLC) proposal to repeal Title 2, California Administrative Code, Article 2, and substitute new Articles 2 and 2.5 therefore. PGandE's interest in the matter is based on its ownership of several marine petroleum terminal sites and many river and other wetland natural gas pipeline crossing sites presently under lease from SLC. The amendments objected to would, if enacted, allow the State Lands Commission to impose a "throughput" charge on an "ad hoc" basis for any commodity, including crude oil, petroleum products, natural gas and liquified natural gas, and related products passing through pipelines that are located on State lands.

This is not a new proposal. In 1974, the Auditor General proposed similar "throughput" charges to be applied to SLC administered leases for marine terminal sites. No rationale supporting this concept has ever been advanced by the SLC.

In 1975, the Commission ordered an investigation by the Division of State Lands into the concept of rental rates based on "throughput." That proposal would have man-

dated the imposition of a "throughput" charge based on a prescribed rate times the unit of oil or gas whenever that charge would yield a greater return to the State than the standard rental. PGandE opposed the concept for various reasons, including an estimated additional financial impact on the Company's electric and gas customers in the order of $4 to $5 million annually in an era of rapidly escalating energy costs, the lack of any relationship of the charge to the value of the lease to the lessee, and that it was, in fact, a "tax" on the products carried in interstate commerce already pervasively regulated by the Federal Government. No rationale was advanced by either the State Lands Commission or the Division of State Lands to support the "throughput" charge.

Comparability with Port Facilities

The use of marine terminal facilities, which are controlled by various port authorities in the State, is not a proper comparison to the offshore marine sites being leased by the SLC. A port authority generally undertakes various engineering, construction, and maintenance responsibilities, and provides security for the facility which, in return for the "throughput" charge, provides the lessee with wharfage, dockage, and usually land for necessary facilities. The annual rental charge by the port authority is generally an amortization of the cost of such facilities over the term of the lease agreement. The lessee receives the use of the improvements and the "throughput" payments are used by the lessor to defray the cost of services which he provides. In the case of the marine terminal leases, which PGandE holds from the SLC, the SLC does not lease marine terminal facilities, but rather it leases unimproved marine terminal sites in which the State has made no investment and on which the State intends to expend no funds. All improvements are provided by the lessee. Even aides to navigation are provided by the lessee and are

maintained at the lessee's expense. Equating the rent or lease fee, based on throughput of oil through improved facilities with the "throughput" charges proposed in the amendments for SLC unimproved tidelands, is unreasonable.

The same rationale underlies PGandE's opposition to the application of "throughput" charges to natural gas moving through pipelines buried under the State's inland navigable waterways. The "throughput" charge may be likened to the tolls collected by the California Toll Bridge Authority. An auto driver crossing the series of toll bridges will pay a toll each time he crosses a bridge. If the proposed amendments are enacted, the SLC may collect a tax on each unit of gas or oil each time that unit proceeds through the pipeline buried in an SLC lease. But, there the similarity ends. The Toll Bridge Authority, in return for the payment of the toll, provides and maintains an expensive bridge structure. The tolls are used not only to maintain the bridge, but also to amortize the capital investment. In the case of natural gas pipelines, the State provides only an unimproved underwater lease site. The lessee is required to provide the total capital investment, maintain the pipeline, mitigate any environmental consequences, and bear the burden of risks of danger to persons and property resulting from lessee's operations.

It should be noted that SLC leases for natural gas pipelines and fuel oil pipelines in unimproved terminal facility leases are essentially nonexclusive leases. The lessee's facilities interfere in no way with the multiple use of the water by others. With the exception of the small periods of time when marine terminal berths are actually occupied by tankers, others are free to use the waterway for recreational and commercial purposes. Natural gas pipelines, likewise, are no barrier to the commercial or recreational use of the waterway or the river bottom. It is PGandE's position that the extraction of a "throughput"

charge, as an alternative to annual lease payments based on the appraised value of the land, is the extraction of a fee for no services rendered.

Impact on the Consumer

The imposition of "throughput" charges would have a direct impact on PGandE's electric and gas rate schedules for the average citizen in PGandE's service area, which includes most of Northern and Central California. Assuming the "throughput" rates imposed are comparable to those contained in the 1975 proposal, the increase in costs to be expected can be exemplified as follows:

PGandE's present lease payments at Morro Bay for 58 acres of land and about 3,000 feet of buried pipe are $28,420.08. Applying the "throughput" charge from the 1975 proposal to the estimated fuel oil requirements for 1977 at Morro Bay will cause the payments to escalate to an excess of $75,000.

"Throughput" charges seem particularly inappropriate for our electric utility fuel because, except for small quantities of low sulfur crude, almost all of our low sulfur fuel is residual oil from California refineries. Assuming the imposition of a "throughput" charge on the refiners, our electric customers will pay the charge as many as three times; once when the oil company brings crude in, once when the residual commodity is shipped out, and once when it is delivered to PGandE through Company facilities.

PGandE serves a population of 8.6 million people of which 7 million customers are gas customers. In order to serve these customers, PGandE has 4,875 miles of natural gas transmission pipelines and 26,000 miles of distribution pipelines. Through these pipelines, we deliver 672 billion cubic feet of natural gas annually. Some additional quantities of natural gas are delivered to the fossil fuel steam electric generating plants for the generation of electricity.

Lease payments on two of PGandE's Canadian gas line crossings of the San Joaquin and Sacramento Rivers would rise from $6,920 to $856,640 if the 1975 proposed rates were imposed. The increases for these two exemplary leases result in payments 123 times as great under the "throughput" charge proposal as under the usual method of calculating lease payments.

"Throughput" charges would, in effect, place an indirect tax upon the utility customers within our service area since such a charge would become part of the operating expense in deriving electric and natural gas rates. The additional costs of metering facilities necessary to accurately determine gas flow through the lease would be added to the rate base. Such indirect taxations seem unjust in light of the large increases in electric and gas rates that have already occurred due to rising costs of energy producing fuels. It is also possible that such a "throughput" charge would approximate a tax on Interstate Commerce, particularly with respect to the Colorado River natural gas pipeline crossing and the marine fuel oil terminals.

PGandE's studies, in response to last year's proposal, show that the Company would be passing through to its customers an additional cost attributable to the "throughput" charges of $4 million annually. Because there is no rate set in this year's proposal, the potential impact is much larger. The cost of new supplies of gas delivered in California will be very much higher in the future. PGandE is concerned about the ever increasing burden that consumers are being asked to bear. The additional burden cannot be avoided when it is rationally related to the increased costs of essential services and raw materials. It is PGandE's position that when increased costs are not rationally related to essential services and raw material costs, it is indefensible to place this burden on consumers of essential energy, many of whom are elderly and poor

and who are less able than others to subsist without a plentiful supply of electricity and gas.

As a regulated utility charged by law with providing an adequate and reliable supply of essential energy in two forms to almost all of Northern California, the Company's planning and operations are continuously monitored by State and Federal agencies. From the design and location of power plants to the selection and routing of fuel alternatives, from the price at which we obtain fuel to the price at which we sell energy, our decisions are scrutinized by the Energy Commission, the Public Utilities Commission, the Federal Power Commission, the FEA, the NRC, and a host of other agencies. The imposition of "throughput" charges on utilities will have a grievous, if presently an unquantifiable input on the Company's operations, rates, and planning, all of which are regulated. For example, if larger "throughput" charges are imposed on one type of fuel, another becomes much more economical not only in our own plants, but in the plants, businesses, and homes of our customers. The available choices are being investigated and guided now by the "alphabet" agencies based on a careful evaluation of all the facts and their ramifications; it should not be State policy to convert every lease application into a system wide rate, operation, and planning decision whose impact may distort the announced policies of the State and Federal agencies who are attempting to construct a rational energy policy for the State. The purvase regulation of utilities furnishes a sound legal basis for exempting the facilities of publically regulated utilities from "throughput" charges. At the least, the SLC should refer the proposed regulations to the appropriate regulatory agencies for investigation, analysis, and comment.

Not once during the last three years has the Commission or the Division of State Lands set down in plain English a

rationale for imposing "throughput." Not one scrap of evidence, factual or conclusionary, has been introduced which would support the changes in the rental regulations as proposed. PGandE urges the State Lands Commission to reject the "throughput" charge technique as a basis for computing rental charges on SLC administered leases, particularly for utilities. The proposed alternative method of computation of an annual rental, based on the appraised value of the land plus a fixed fee based on the diameter and length of the pipeline buried in leased lands, will produce revenues sufficient to yield a reasonable rate of return for the use of the State's submerged lands.

STATEMENT OF WESTERN OIL & GAS ASSOCIATION DATED APRIL 21, 1976

Statement on Behalf of the
Western Oil & Gas Association
Before the
California State Lands Commission
Sacramento, California
April 21, 1976

Re: Proposed Changes in the Commission's Leasing Regulations to Permit Imposition of Throughput Charges

My name is Greg McClintock. I am appearing here today as attorney for the Western Oil & Gas Association, which, as you may be aware, is a trade association whose members conduct more than 90% of the production, refining, transportation and marketing of petroleum and petroleum products in the Western United States, including the State of California. I respectfully urge the Commission to reject the proposed changes in your regulations which would allow the imposition of a throughput charge. However well intentional these proposed changes may be, we believe the Commission is being asked to do something that is clearly unlawful and beyond its authority. We come to that conclusion for the following reasons:

First: What is being proposed is an entirely new system of establishing rentals for the use of unimproved State lands—a charge for the use of such lands based *not* on what the State has given up or even on the costs to the State of administering its leasing program, but rather a charge based on the amount of product being transported across the land.

As I am sure the Commission is aware, valuation of easements and rights-of-way across both State and private property have traditionally been based on the concept of restoring the owner of the property to the same economic position he would have been in but for the granting of the

easement or right-of-way. This traditional method of valuing easements and rights-of-way—a method designed to prevent a windfall to the owner of the property by reason of his strategic location in the pathway of some necessary facility—has been codified into law in California. Section 6503 of the Public Resources Code instructs the Commission to "appraise the land" and establish its rentals based on that appraisal. The existing regulations, for the most part, are in harmony with the statutory directive and traditional easement and right-of-way valuation concepts. A charge based on what is passing over the land, however, would have no nexus with the value of what the State has given up or with the land's appraised value.

Second: Many of the easements and rights-of-way which could be affected by the proposed throughput charge are used to transport commodities that have arrived in the State or are making their departure by vessels or pipelines which cross State boundaries or enter Federal waters. Charges based on the volume of commodities being so transported have historically been overturned by the Courts as impermissible restraints on the free movement of interstate commerce, and such charges have invariably been found violative of the Federal Constitution where, as here, none of the factors which the Commission would be permitted by its proposed regulations to consider in imposing the charge can be related to the volume of the shipments being made. The factors which could be considered by the Commission all relate to either the value of the improvement made by the lessee, which cannot be taken into consideration at all in appraising the value of the land, or to the size of the facility which would be constructed on the State's land, thus affecting the value of what the State is giving up. There being no permissible basis on which the Commission could justify the imposition of a throughput charge, it would fall within that class of charges which are forbidden because they inhibit free commerce.

Third: To the extent that marine transport is associated with a State lease, a throughput charge would be further violative of the Federal Constitution because such a charge would be what is technically known as a duty on "tonnage." Many of the easements and rights-of-way which have been leased by the Commission service marine terminals.

Fourth: The imposition of a throughput charge by the State, even a relatively modest one, will undoubtedly have the effect of inducing a wide range of other governmental agencies and possibly private landowners to impose similar charges. And to the extent that several crossings of State land would be required for particular pipelines or products are changed into a different commodity before making the same crossing a multiplier effect could come into play which would greatly escalate transportation costs. The proposal therefore has substantial potential for exerting pressure to substitute rail, truck and tanker transportation for pipelines. It need hardly be emphasized that major environmental impacts would result from such a shift.

Even in the absence of such a shift, the substantial increase in total revenues to the State which would result from all such leases might ultimately impact on consumer prices, creating economic pressures which would, in turn, have their own environmental effects. There being no exemption from CEQA for this type of State action, it appears obvious to us that the preparation of an environmental impact report dealing with these potential consequences is required. So far as we are aware, no such report has been prepared.

Beyond these legal problems, and from a purely practical point of view, the adoption of such a proposal at this particular time, when the consumer and the business community are already struggling under the very heavy

burden of inflated costs in all sectors of the economy would seem particularly unwise. The potential ripple effect (imposition of similar charges by other public and private landowners) could make many activities—not only petroleum transport, but the transportation of electricity, water and telephone signals—economically prohibitive. We do not believe the State Lands Commission really intends such consequences or would accept them solely to increase revenues to the State.

For both the various legal reasons outlined above and the unwelcome practical consequences which could flow from adoption, we most strongly urge the Commission to reject this proposal and retain its current regulations, regulations which we believe provide the State with a more than fair return for the property rights being given up.

Thank you very much.

LETTER FROM SAN DIEGO GAS & ELECTRIC COMPANY DATED APRIL 20, 1976

April 20, 1976

State of California
State Lands Division
1807 13th Street
Sacramento, CA 95814

Attention: Mr. James F. Trout
Manager, Land Operations

Gentlemen:

San Diego Gas & Electric Company has reviewed the latest regulations proposed by the Commission as expressed in your letter dated April 8, 1976, and would like to offer the following comments.

In the interest of avoiding repetition and duplicating our past efforts, we ask the Commission to refer to our letter dated April 25, 1975 (copy enclosed) which summarized and graphically illustrated our areas of concern and disagreement regarding the methodology of such Commission regulations.

The most noticeable revision to the latest regulations is the absence of a rate schedule employing the volume of commodity concept. Not knowing now the Commission will apply this concept, we must take exception simply on the basis of it being too vague and ambiguous.

We and other utilities have conceptually agreed that the Commission is entitled to a reasonable rate of return for the use of State lands while employing and adhering to universal land appraisal practices. To additionally burden

the utility industry with regulations employing the volume of commodity concept appears to disregard the adverse ramifications that are surely to follow. The interest of the customers we serve demands consideration because they will ultimately be the recipients of these rate increases proposed by the Commission.

Sincerely,

/s/ R. L. Ellis, Manager
Engineering Land Department

SAN DIEGO GAS & ELECTRIC COMPANY

April 25, 1975

State of California
State Land Commission
1807 - 13th Street
Sacramento, CA 95814

Attention: James F. Trout
Manager, Land Operations

Gentlemen:

Your April 7, 1975 letter presented proposed revision of regulations for non-extractive lease operations on State owned lands under the jurisdiction of the State Lands Commission.

San Diego Gas & Electric Company vigorously objects to the proposed "throughput" charge for crude oil, petroleum products, natural gas and liquefied natural gas passing through pipelines located on State owned land because of the unfair burden it will impose upon our electric service customers.

The proposed "throughput" charge would have major impact upon our Encina Offshore Mooring Facility and connecting pipeline at our Encina Power Plant in Carlsbad, California. This is the only mooring facility in our region capable of handling the 70,000 dead weight ton (dwt) tankers (431,000 barrels (bbl) capacity) which deliver most of the low sulfur fuel oil we are required to use by Air Pollution Control District regulations. Thus, essentially all of the fuel oil used in our fossil fueled electric generating plants must be delivered to Encina with a portion later trans-shipped by barge to San Diego Bay for use in our South Bay, Silvergate and Station "B" power plants. This

double handling trans-shipment operation is forced upon us by the inadequate depth of San Diego Bay which can only accommodate fully laden T-2 class 17,000 dwt tankers carrying 105,000 bbl or partially laden 35,000 dwt tankers carrying no more than 160,000 bbl.

San Diego Gas & Electric Company must use fuel oil in increasing quantities for electric generation because of the growing unavailability of natural gas for this purpose. The following tabulation illustrates the increased dependency on fuel oil:

Year	Natural Gas	Fuel Oil	Other (1/)
1971	53%	28%	19%
1975 est.	28	57	15
1980 est.	0	94	6

(1/) Purchased energy and nuclear.

According to Schedule A of the proposed regulations, the "throughput" charge for our 3525 foot Encina pipeline would be at a rate of 1.6¢ per barrel. Based on the estimated quantities of fuel oil to be delivered to Encina in the 1975-1980 period, the "throughput" charge would be as follows:

Year	Million Barrels	"Throughput" Charge In Dollars (Rounded) @ 1.6¢/bbl
1975	9.098	$145,000
1976	11.999	192,000
1977	14.662	234,000
1978	15.828	253,000
1979	16.920	270,000
1980	17.697	283,000

This added cost of fuel for generating electricity must be borne by our customers who have already been burdened with major increases in the cost of oil fuel. It certainly seems inappropriate for one arm of State government—

the Public Utilities Commission—to order us to do everything possible to keep the cost of fuel down while another State agency is proposing to raise the cost of fuel. The "throughput" charge for natural gas which would immediately apply to our gas lines crossing San Diego Bay to provide gas service to the community of Coronado, is similarly inflationary.

San Diego Gas & Electric Company submits that a "throughput" charge is not an appropriate means for determining pipeline rights-of-way rental. It is a complete change in the present universal practice of relating rights-of-way rental upon unimproved land to the value of the land. To our knowledge use of "throughput" charges have historically been applied by public agencies which are amortizing investment in plant or facilities such as wharfs and docks, tanks or pipelines.

We do not object to the recommended increase from 6% to 8% for annual rent based upon the value of the land which appears reasonable and consistent with standard practice. This form of rent could also be charged for a reasonable strip of land covering pipelines or converted into an equivalent alternative such as the present charge of 1.5¢/diameter inch/lineal foot of pipeline/year.

On behalf of our customers, San Diego Gas & Electric Company vigorously objects to the proposed "throughput" charge. Our customers have already been burdened with significantly increased utility rates and face further increases because of economic and inflationary factors over which neither our Company nor the State have control. The imposition of State mandated increases appears to be totally inappropriate.

If for reasons not apparent in your letter of April 7, 1975 the general public interest requires imposition of a surcharge such as the proposed "throughput" charge, the

regulations should clearly exempt all forms of fuel transported across lands under the jurisdiction of the State Lands Commission for use by utilities in electric generation and natural gas for ultimate distribution to a utility's customers or provide a rebate to off-set the surcharge.

Sincerely,

/s/ C. M. Laffoon

cc: Kenneth Cory, Chairman
State Lands Commission

William Northrop, Executive Officer
State Lands Commission

LETTER FROM SOUTHERN CALIFORNIA EDISON COMPANY RECEIVED APRIL 21, 1976

State of California
State Lands Commission
1807 - 13th Street
Sacramento, CA 95814

Attention: Mr. James F. Trout
Manager, Land Operations

Gentlemen:

On behalf of Southern California Edison Company, I would like to offer the following comments regarding proposed changes to the Commission's rental regulations, Article 2 of the California Administrative Code. These comments supplement our comments to you set forth in my letter of May 2, 1975.

As we stated in our letter of May 2, 1975, Southern California Edison Company is strongly opposed to the proposed throughput charge on oil moved by pipeline across State-owned lands because it is unreasonable and unfair. *Such charges will only place additional cost burdens upon electric ratepayers of Southern California* who have in recent years been burdened with rapidly escalating electric rates due to the effects of general inflation, skyrocketing fuel costs and the required use by utilities of higher proportions and quantities of high quality, high cost, low sulfur fuel oil.

Proposed Sections 2006(b)(2) for *Industrial Leases* and 2006(b)(7) for *Rights of Way* provide as an alternative rental a throughput charge based on volume. This alternative rental fails to specify the rate at which such a charge is to be applied. Because of our increased dependence on fuel oil, as evidenced by decreased availability of natural

gas, and uncertainties regarding future generating sources, we believe the consequences of such throughput charges will be to contribute to increased costs of electric service to our customers. It is our opinion that ratepayers should not be penalized for expected increases in volumes of oil which pass over State lands.

Proposed Section 2006(c) sets forth the various factors which are to be considered by the Commission in determining which of the alternative rentals is in the best interests of the State. The Section significantly fails to include among such factors the economic costs of each alternative rental to utility customers.

Proposed Section 2007(b)(2) is apparently intended to limit rental rates for right of way based on volume by apportioning in the proportion that the length of a pipeline passing over State lands bears to the total length of the pipeline. It is unclear what the limiting factor is and further what charges would be computed based upon this formula.

It is our concern that the overall consequence of these regulations will be to add another unnecessary increment to oil costs which must be passed on to our customers.

We once gain suggest that if the proposed regulations are adopted, that they be revised to specifically exempt from the throughput charge fuel moved by pipeline across State lands for ultimate use by utilities who have a public service responsibility to provide service to their ratepayers at lowest reasonable costs.

Very truly yours,

/s/ P. B. Peecook

EXCERPT FROM TRANSCRIPT OF STATE LANDS COMMISSION MEETING OF APRIL 28, 1976

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[A.R., p. 654*]

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is a project that the staff has been working on for over a year. We are now ready to propose to the Commission the adoption of some regulations on volumetric rental rates. You have [A.R., p. 655] in front of you, I believe, a report which was circulated among all of you prior to this meeting.

I think, at this time, Mr. Taylor's office and Mr. Trout's office have done a great deal of work on this. I would like, at this time, to turn the area of the presentation for the staff to Mr. Taylor, Mr. Trout, and Mr. Hight.

Mr. Taylor, would you care to lead?

MR. TROUT: Maybe I will take the lead, then.

The Commission will probably recall that early in your tenure here as Commissioners, last March, you proposed volumetric rental rates and a general number of changes in the regulations to bring rental rates currently to the market place.

Following the Commission action in March, hearings were held April 29 in Sacramento, and May 2nd in Long Beach, on the new rental regulations. Those hearings produced only comments concerning the volumetric rental rates, and one gentleman appearing concerning salaries. All but the volumetric rate schedule were adopted by the Commission in May, 1975.

At that time, the Commission directed the staff and the Office of the Attorney General to conduct additional review and hold additional hearings and make additional deter-

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*Page references are to pages of the State Lands Commission's Administrative Record which contain the reporter's transcript of proceedings for April 28, 1976.

minations as necessary. Meetings were held with the public utilities as a group on July 22nd, 1975; with the [A.R., p. 656] common carriers on July 23rd, 1975; and with representatives of the oil industry on July 31st, 1975.

In reviewing this, the Office of the Attorney General retained an evaluation consultant familiar with special use property appraisals. The Division staff and the consultant continued to investigate leasing processes of major California ports, examined numerous right-of-way leases issued by public and private entities, and, in general, conducted a search of data relating to the leasing of similar lands.

The points brought out by those appearing at the hearings were basically these: That the initially proposed schedule would result in a rental being charged several times for the same product. That there was a potential pecuniary defect if the State adopted the rental based on volumetric charge. That other landowners might well charge on the same volumetric basis, with the result being a prohibitively high transportation cost, even if there were no precedence for the imposition of a volumetric charge. And four, that the proposed fixed rental schedule would result in an arbitrary, discriminatory, and unjustifiable rental being imposed by the Commission.

On review, we find that these situations are not a result of volumetric rental rate charges. We find that the private landowners frequently charge for logging based on the [A.R., p. 657] amount of board feet transported over the road. Here the responsibility for road construction and maintenance is generally the responsibility of the timber harvester.

There is evidence of a first-time throughput charge for rights-of-way used for hauling coal. The City of Seal Beach, in return for a franchise to use city-owned streets, charges Exxon two percent of the royalty paid the State on offshore oil and gas. The private property leased by the Hollister Estate Company, in return for the use of pipe line rights-of-way, charges two percent of the royalty paid to the State.

A portion of the wharfage charge imposed by ports for the off-loading of cargo on port lands represents a throughput charge for use of unimproved lands. Similarly, it appears that a portion of throughput charge imposed by pipe line operators for the use of their pipe lines necessarily goes to recover and obtain the return of right-of-way costs.

Percentage leases form a variable rental lease also where the amount of rental is influenced by volume. In this case, the volume was goods sold. It might be bourbon highballs, or something, but the same kind of thing.

The revised proposal before you today is based on the following staff determinations: That land rentals, varying with the volume of commodities passing over [A.R., p. 658] unimproved lands, is being enjoyed by other landowners in similar situations.

Two, that volumetric rental is otherwise reasonable and under all circumstances may be employed as one of the alternative rental basis used by the Commission. Instead of adopting an inflexible schedule of volumetric rental rates, uniformly applicable to widely varying factual situations; it is preferable to refer to the volumetric rental concept based on several alternatives and several options available for use by the Commission, at the same time, providing it with some criteria for establishing and applying its rental concept.

Now, several additional proposals, or objections, have been raised including the fact that the Code requires appraisals, that an environmental impact report is required, that the rental rate is, in fact, a charge and would be an unreasonable burden on interstate commerce. We find that none of these proposals have any merit. In the staff's judgment, the proposed regulations as revised have a sound basis in fact and in law. Your staff recommends that they be adopted by the Commission.

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REPORT OF THE STATE LANDS DIVISION ON VOLUMETRIC RENTAL RATES PRESENTED AT STATE LANDS COMMISSION MEETING APRIL 28, 1976

[This report is printed as Exhibit 1 to the affidavit of Gary H. Horn, set forth earlier in this Joint Appendix, and is not reprinted here.]

PORT OF LONG BEACH TARIFF NO. 3
[EFFECTIVE JANUARY 15, 1975]

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SECTION 1—DEFINITIONS—Continued

WHARF—WHARF PREMISES

Item No.

(a) "Wharf" shall mean and include any wharf, pier, quay, landing or other stationary structure to which a vessel may make fast or which may be utilized in the transit or handling of goods and merchandise, and shall also include all the area between the pierhead and bulkhead line, excepting, however, such locations as may be set apart as public landings or for private use. 108

(b) "Wharf premises" shall mean and include, in addition to the area included in the term "wharf," other port terminal facility areas alongside of which vessels may lie or which are suitable for and are used in the loading, unloading, assembling, distribution or handling of merchandise.

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MERCHANDISE

The term "merchandise" includes all goods, wares, material, freight, cargo, live animals, water, fuel, lubricating oils, vessel's stores and supplies, and other merchandise. 111

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SECTION 2—PILOTAGE

DEFINITIONS

(a) PILOTAGE: The charge, calculated in accordance with the pilotage charges named in this tariff, assessed against a vessel, which is subject to the payment of pilotage under these rules, for the service rendered or proffered of piloting such vessel on entering, leaving or shifting in the Port of Long Beach. 200

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SECTION 3—DOCKAGE

DEFINITION OF DOCKAGE

Item No.

DOCKAGE: The charge, calculated in accordance with the dockage charges named in this tariff, assessed against a vessel for berthing at or making fast to a municipal wharf, pier, bulkhead structure, or bank (inside berth), or for mooring to another vessel so berthed (outside berth). 300

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SECTION 4—WHARFAGE

WHARFAGE, DEFINITION OF:

Wharfage: The charge assessed against all merchandise (See Item 111), calculated in accordance with the wharfage charges named in this tariff for the passage of that merchandise onto, over, through or under wharves or wharf premises (see Item 108) or between vessels or overside vessels (to or from barge, lighter, or water) when berthed at wharves or wharf premises or when moored in a slip adjacent to a wharf or wharf premise. Wharfage is solely the charge for use of wharves or wharf premises and does not include charges for any other service or 400

WHARFAGE, APPLICATION OF:

(a) Except as otherwise provided in this tariff, the wharfage charges named are in cents per ton of 2,000 pounds or 40 cubic feet, according to vessel's manifest, on whichever basis the water freight charges are assessed. 405

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WHARFAGE, CHARGES FOR:

Wharfage charges, as provided in this section, are in addition to all other charges contained in this tariff and shall, unless otherwise provided, be assessed against all merchandise, except that afforded free wharfage under the provision of Item 410 and shall be paid in accordance with Item 1225. 417

ARTICLES	Rates in Cents	Item No.
Merchandise, [not otherwise specified] (See Exception 1)	◆200	◆420
Exception 1: Free wharfage is provided for certain merchandise in Item 410.		
Merchandise, in bulk (See Exceptions 1, 2, 3, and 4)	◆ 70	
Exception 1: Gypsum Rock, in bulk, from self-unloading vessel at Berth 83	◆ 33	
Exception 2: Merchandise, in bulk, to vessel at Piers D and G by means of belt conveyor type mechanical ship-loaders or by gravity chutes, except: beans; feed, animal and poultry; grain and grain products; oil seeds; peas; pellets, alfalfa, beet pulp, copra, and cottonseed; safflower seeds; seeds, soy-beans; and related products, processed or unprocessed, in bulk	◆ 33	◆425
Exception 3: Grain originating in O.C.P. Territory as defined in Item 117, per bushel	◆ 0[illegible]	
Exception 4: Salt, in bulk	◆ [illegible]	
Merchandise, in bulk, in cargo vans	◆200	◆430
Bananas, per ton of 2,000 pounds	◆200	
Exception: Direct from vessel by private mechanical conveyors, per ton of 2,000 pounds	◆175	◆435
Boats, including launches, skiffs and yachts (including trailers and/or cradles) per 40 cubic feet (Subject to Notes 1, 2 and 3)	◆200	
Note 1: The maximum charge for a boat shall be $3.20 per lineal foot.		◆440
Note 2: When shipped in cradles or on trailers, the length of the cradle or trailer shall be included in the overall measurement.		

ARTICLES	Rates in Cents	Item No.
Note 3: Applies only in the Hawaiian Trade.		
Buildings, Modules, including mobile, per section	◆6500	◆443
Coffee, green, in bags, per ton of 2,000 pounds	◆200	◆445
Cargo Vans, (See Item 122), empty, having 70 cu. ft. or more space set-up, when no freight charges on the van itself are assessed, per ton of 2,000 pounds	◆200	◆450
On all other cargo vans, except those on which no wharfage shall be assessed under Item 410(i), Merchandise [not otherwise specified], rates shall apply.		
Containers and Carriers, (used) shipping, empty [not otherwise specified], set-up or K.D. (not including bags and sacks), per 40 cu. ft. or 2,000 pounds, whichever yields the greater revenue	◆105	◆455
• • •		
Fresh Fruit and Fresh Vegetables, manifested on a per package basis, per ton of 2,000 pounds	◆200	◆460
Liquids, except petroleum and petroleum products and water, as provided in Section Seven, in bulk, from and to vessel through private line	◆ 40	◆465
Lumber and Lumber Products, viz.:		
Lumber, logs and timber, per 1,000 ft. [board measure]. (See Note 1)	◆380	
Cedar, Fir, Pine, Redwood, Spruce and all other softwood lumber, logs and timber, [not otherwise specified], including Laths, Shingles, Shakes and Ties, coastwise, inbound, per 1000 ft. [board measure]. (See Note 1)	◆133	◆470
Dunnage and Ship Lining (other than as provided in Item 410) per 1000 ft. [board measure]	◆300	
Piles and Poles, per lineal foot	◆ 4	

ARTICLES	Rates in Cents	Item No.
Note 1: If freighted by vessel on other than a B.M. basis, the Merchandise, [not otherwise specified], rate shall apply.		
Paper, viz.:		
Newsprint and wood pulp, per ton of 2,000 pounds	◆175	◆475
Passengers, each (See Exceptions 1, 2 and 3)	150	
Exception 1: Charges do not apply to passengers on vessels where accommodations are limited to 12 or less		
Exception 2: Charges do not apply to passengers traveling to or from points within a radius of 100 miles of the Port.		480
Exception 3: Charges do not apply to passengers traveling on vessels when exclusively engaged in accredited college or university educational programs.		
Petroleum and Petroleum Products:		
In bulk from or to vessel, direct through private line, per barrel of 42 gallons (See Exception)	◆ 01.33	
Petroleum products, except gasoline, in bulk, moving direct between vessel and tank car or truck	◆ 40	◆482
Exception: From barge to vessel at municipal wharf, when barge not previously loaded at municipal wharf, or at any other oil loading wharf designated by the General Manager, per barrel of 42 gallons	◆ 02.66	
United States Mail, per ton of 2,000 pounds	◆320	◆484

• • •

	Rates in Cents	Item No.
Vehicles, Motor, self-propelling, viz.: (See Exception)		
Automobiles, Pleasure, Passenger, Commercial or Freight, including chassis, freight trailers or freight semi-trailers, not boxed or crated, S.U. on own wheels, per ton of 2,000 pounds. (When boxed or crated, the Merchandise, N.O.S., rate shall apply.)	♦678	♦486
Exception: Does not include agricultural, earth-moving or road making equipment.		
Vessel's Stores and Supplies, per ton of 2,000 pounds (other than as provided in Item 410)	♦200	♦490

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SECTION 5—WHARF DEMURRAGE, WHARF STORAGE AND FREE TIME DEFINITIONS

(a) Wharf Demurrage is the charge, calculated in accordance with the Wharf Demurrage rates as provided herein, assessed against merchandise which remains on the wharf or wharf premises after the free time allowed.

(b) Wharf Storage is the charge, calculated in accordance with Wharf Storage rates as provided herein, assessed against merchandise which remains on the wharf or wharf premises and has been accepted for storage. 500

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(e) Free Time is the specified number of days during which merchandise may occupy space assigned to it without being assessed Wharf Demurrage.

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Office - Supreme Court, U.S.
FILED
NOV 15 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-16

In the Supreme Court

OF THE

United States

KENNETH CORY, LEO T. MCCARTHY, and
JESSE R. HUFF, members of the
California State Lands Commission,
Appellants,

VS.

WESTERN OIL & GAS ASSOCIATION, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX (Vol. III)

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Appeal docketed July 5, 1984
Probable jurisdiction noted October 1, 1984

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

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LEASE BETWEEN CITY OF LONG BEACH AND EXXON CORPORATION

LEASE AND LICENSE AGREEMENT

This Agreement is made and entered into, in duplicate, as of the 5th day of July, 1974, pursuant to Ordinance No. HD-1038, adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 3, 1974, by and between the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners, hereinafter referred to as "City", and Exxon Corporation, a New Jersey corporation, with a place of business at 1800 Avenue of the Stars, Los Angeles, California 90067, hereinafter referred to as "Lessee".

WHEREAS, City and Powerine Oil Company, as Lessee, entered into a Lease and License Agreement as of January 1, 1963, pursuant to Ordinance No. HD-657 of the Board of Harbor Commissioners of the City of Long Beach, wherein Powerine Oil Company was granted a lease of certain property upon which it constructed a tank farm for the storage of fuel oil and petroleum products, and wherein it was granted an exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew two (2) fuel oil-bunkering pipelines in certain areas for the purpose of bunkering ships with its fuel oil, together with certain optional rights; and

• • •

WHEREAS, Lessee and City entered into a new Lease and License Agreement as of July 6, 1972, to supplant the above-mentioned Lease and License Agreement, which incorporated rights, privileges and obligations of other agreements, terminated said Agreement and another agreement, and provided for leasing additional land and water areas, and related facilities from City, and for installation of additional storage and bunkering facilities as therein provided; and

WHEREAS, Lessee and City desire to enter into a new Lease and License Agreement to supplant the Lease and License Agreement entered into as of July 6, 1972 • • • ; and

WHEREAS, the construction, operation and maintenance of fuel oil-burning services by Lessee will further promote and aid commerce and navigation in the Port of Long Beach;

NOW, THEREFORE, in consideration of the foregoing, and of the covenants, conditions and agreements herein contained, City, for itself, its successors in interest and assigns, and Lessee, for itself, its successors in interest and assigns, do hereby respectively agree to keep and perform all of the covenants, conditions and agreements hereinafter provided to be kept and performed by City and Lessee, respectively, to wit:

1. *TERM.* The term of this Agreement shall commence as of the first day of the month following the date of execution hereof by the General Manager of the Long Beach Harbor Department, and shall terminate June 30, 2010.

This agreement may, at Lessee's option, be terminated as of the last day of June in 1990 or 2000. Such option to cancel shall be exercised by written notice given by Lessee to City on or before the first day of January in the year in which the Agreement is to be terminated.

2. *PREMISES.*

a. *Leased Premises.* Effective as of the commencement of the term of this Agreement, except as otherwise provided, City does hereby grant, and Lessee accepts:

(1) An exclusive lease of those certain premises on Pier A in the Harbor District of the City of Long Beach, containing approximately 160,886 square feet, and designated Parcel 1 on Harbor Department Draw-

ing HD 4-31 attached hereto and by this reference incorporated herein.

(2) An exclusive lease of those certain premises at Berth 211-A, Pier A, in the Harbor District of the City of Long Beach, containing approximately 15,412 square feet, and designated Parcel 2 on said Harbor Department Drawing HD 4-31 attached hereto.

(3) An exclusive lease of that certain water area at Berth 211-A in the Harbor District of the City of Long Beach, containing approximately 15,211 square feet, and designated Parcel 3 on said Harbor Department Drawing HD 4-31 attached hereto. City reserves the right to itself and third parties to use said water area for navigational purposes to the extent the same is not used by Lessee pursuant to this Agreement.

Said Parcels 1, 2 and 3 are referred to herein as the "Leased Premises" or the "premises". The legal descriptions of said parcels are set forth in Exhibit "A", attached hereto and by this reference incorporated herein.

b. *Licensed Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts:

(1) An exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew fuel oil and diesel fuel underground bunkering pipelines, and related surface and subsurface appurtenances and facilities, for the purpose of bunkering vessels with Lessee's own (within the contemplation of Paragraph 3d(1)) fuel oil or diesel fuel on Piers A, B, C, D, F, G and J at the berths served by the pipelines depicted on Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 149-3 attached hereto and by this reference incorporated herein.

* * *

d. *Assigned Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts, a tertiary berth assignment for use of the wharf and wharf premises and the water area adjacent thereto required for the berthing of vessels, at Berths 209 and 210, Pier A. Lessee's right to use said wharf and berth facilities is subject to (1) the preferential berth assignment of Berth 210 granted by the Bulk Commodity Terminal Lease (Document No. HD-1332) entered into as of May 2, 1966, as amended, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Koppel Bulk Terminal, (2) the secondary berth assignment of Berths 209 and 210 granted by the Lease and License Agreement (Document No. HD-2238) entered into as of June 30, 1972, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and National Molasses Company, and (3) to the rights granted by that certain lease entered into as of November 4, 1970, between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Ocean Salt Co., Inc. (Document No. HD-2068) with respect to the location of the overhead conveyor system at Berth 209.

e. *Exceptions, Reservations and Encumbrances.* There are excepted and reserved from the Leased Premises, from the Licensed Premises and Optional Licensed Premises and from the Assigned Premises all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from said premises without, however, the right of surface entry.

This Lease and License Agreement and all rights granted to Lessee hereunder are subject to restrictions, reservations, conditions and encumbrances of record, including,

without limitation, the following legislative grants, to wit: Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; and Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session; the Charter of the City of Long Beach, the federal navigational servitude and, in addition thereto, any off-record matters affecting said Leased Premises of which Lessee has actual notice.

3. *USES.*

a. *The Leased Premises.* Parcel 1 and 2 may be used by Lessee for the construction, erection, installation, use, operation, maintenance, repair, and renewal of tank storage for Lessee's fuel oil, diesel fuel, other petroleum products and crude oil, and for related appurtenances and facilities, including, but not limited to, necessary electrical pumping facilities, warehouses, and office buildings, in conjunction with the operation by Lessee of its fuel and diesel oil-bunkering services under this Agreement. Parcel 3 may be used for the berthing and mooring of vessels, including barges, and for their loading and unloading, in conjunction with Lessee's operations.

b. *The Licensed Premises.* The Licensed Premises shall be used by Lessee to lay, construct, operate, maintain, repair, remove, extend, alter, and renew pipelines for the transportation of Lessee's own (within the contemplation of Paragraph 3d(1)) crude oil, fuel oil, diesel fuel and other petroleum products from the Leased Premises to vessels, including barges, at the berths of the Port of Long Beach and return lines for flushing purposes, together with all traps, manholes, and related surface and subsurface appurtenances and facilities thereto, for ingress to and egress from the same, along the pipeline routes shown on said Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3.

c. *The Assigned Premises.* The Assigned Premises may be used for the berthing of vessels, including barges, thereat and for the loading and unloading and other disposition of liquid bulk commodities between said vessels and barges at said premises and the wharf premises, for the embarking and disembarking of passengers and crew members and their baggage, and for the loading and unloading of vessels' stores and supplies. Whenever said Assigned Premises, or any part thereof, are not required, in whole or in part, by Lessee for the uses permitted under this tertiary assignment, the General Manager shall have the right to, and may make, temporary assignments to any other person, firm or corporation to use said Assigned Premises, or any part thereof, as provided in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff.

d. Lessee's operations conducted upon the Leased, Licensed and Assigned Premises shall be restricted to the following:

(1) A proprietary operation in which title to the crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above shall be vested in Lessee at the time such commodities pass over the wharf from vessel or barge, or shall become vested in Lessee at some point in Lessee's pipeline or storage system on the Leased Premises, Licensed Premises or Assigned Premises, in accordance with the provisions of a purchase or exchange agreement. Lessee may load crude oil, fuel oil, diesel fuel and refined petroleum products, chemicals, liquids, and dry cargo referred to above aboard common carriers by water or any other vessel common carriers by water or any other vessels or barges at the wharf structure located on the Leased, Licensed or Assigned Premises for use or carriage by said vessels or barges, provided Lessee has title to said commodities up to the time the same pass ship's rail.

(2) An operation whereby Lessee may receive, handle, load, unload, and transport crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above, owned by others, provided that the same shall not be loaded into or discharged from vessels that are common carriers by water, as said term is defined in the Shipping Act, 1916, as amended.

• • •

4. *CONSTRUCTION OF IMPROVEMENTS BY LESSEE.* Lessee agrees to install, or have installed, at its sole cost and expense, fencing and fire protection equipment, as may be required by the Long Beach Fire Department, on the Leased, Licensed and Assigned Premises.

In addition to the improvements described above, Lessee may, at its sole cost and expense, construct, erect and install additional buildings, structures and improvements and may make alterations thereto and to existing improvements, buildings and structures upon the Leased Premises, and may construct, erect and install improvements and may make alterations thereto and to existing improvements upon the Licensed Premises, provided that such additional buildings, structures and improvements and alterations shall not be installed, erected, constructed or made except in accordance with (a) plans and specifications previously submitted to the General Manager and approved in writing by him, and (b) the covenants, conditions and agreements of this Agreement. Said approval shall not be unreasonably withheld.

5. *RENTAL.*

a. *Rental of Leased Premises.*

(1) *Parcel 1.* Lessee shall pay to City, as rental for the use of Parcel 1, the sum of Three Thousand Six Hundred Nineteen and 93/100 Dollars ($3,619.93) per month, in advance, on the first day of each calendar month while this Agreement is in effect.

(2) *Parcels 2 and 3.* Lessee shall pay to City, as rental for the use of Parcels 2 and 3, the sum of Two Thousand Five Hundred Fifty-Two and 58/100 Dollars ($2,552.58) per month, in advance, on the first day of each calendar month while this Agreement is in effect. • • •

(4) The foregoing rental for said Parcels 1, 2 and 3 shall be in lieu of tariff charges assessed by City in accordance with applicable Port of Long Beach tariffs, as hereinafter mentioned, but tariff charges shall be applicable when accruing in connection with Lessee's operations upon the Licensed and Assigned Premises as provided in Paragraph 7 herein.

b. *Rental of Licensed Premises.* Lessee shall pay to City, as rental for the use of the Licensed Premises, a sum computed from the pipeline rental fees prescribed in Section 7560.9 of the Municipal Code of the City of Long Beach, at the annual rates, in cents, per inch of nominal diameter (not including protective casing) per lineal foot per year of the pipelines installed and maintained pursuant to this Agreement, subject to such annual fee adjustments resulting from the application of the provisions of said Section 7560.9, as directed by the Board of Harbor Commissioners. Said Section 7560.9 provides for an annual adjustment of the base rates set forth therein, based on the "Index Number of Wholesale Prices" of the United States Bureau of Labor Statistics.

Said rental for the Licensed Premises shall be paid annually in advance; and in the event of an installation or removal or abandonment of pipeline facilities during an annual period, the payments otherwise due City for use of said Licensed Premises by such facilities shall be prorated for said annual period as of the end of the calendar month in which such installation, removal or abandonment is approved by City's Board of Harbor Commissioners. After

Lessee has completed each installation or abandonment of pipelines on the Licensed Premises, the rental may be adjusted on the basis of the actual length of pipelines in place in accordance with the lengths depicted on the "as-built" drawings to be furnished by Lessee.

• • •

7. *TARIFF CHARGES.* Lesseee shall pay, or cause to be paid, to City the total amount of all applicable charges accruing in connection with Lessee's operations upon the Licensed Premises and the Assigned Premises (including, but not limited to, wharfage, wharf demurrage, wharf storage and dockage) under the schedule of rates covering the use of wharves and wharf premises and other facilities and appliances owned, controlled or operated by the City of Long Beach, as the same have been or may be prescribed by the Board of Harbor Commissioners of the City of Long Beach in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff, or otherwise by law.

In connection with the payment of said tariff charges, Lessee shall file, or cause to be filed, statements as follows: (a) On or before the twentieth day following the departure of each vessel docking at berths in the Port of Long Beach served by Lessee's bunkering facilities, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for dockage, wharfage and other applicable charges with reference to each such vessel; (b) On or before the tenth day of each month, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for wharfage where the departure of a vessel is not involved, and for all wharf de-

murrage, storage and other charges, if any, during the preceding calendar month.

Lessee shall keep full and accurate records relating to its operations on said Leased, Licensed and Assigned Premises, and the records which are pertinent to the provisions of this Agreement shall be subject to inspection by representatives of City at any and all reasonable times during normal business hours, and copies may be made of any and all such records.

City agrees that it will not, during the term of this Agreement, control or limit any charge Lessee may make any of its customers for, or based upon, transportation of any fuel oil, diesel fuel, crude oil, or other petroleum products, chemicals, liquids or dry cargo commonly used or dealt in by those engaged in the petroleum industry, within or across the Leased, Licensed or Assigned Premises (this does not pertain to dockage or wharfage).

• • •

9. *DUTY TO REPAIR AND RESTORE.* Except as otherwise provided herein, Lessee shall operate, keep and maintain the Leased Premises and all improvements thereon, whether owned by City or Lessee, in good and substantial repair and condition, and shall make all necessary repairs and alterations thereto and perform all necessary maintenance thereof, all at its sole cost and expense.

Except as provided herein, City shall not be required at any time to make any improvements or repairs, or perform any maintenance whatsoever, on or for the benefit of the Leased, Licensed or Assigned Premises or any improvements of any kind constructed, erected or installed thereon.

Lessee agrees to provide proper containers for trash and to keep the Leased, Licensed and Assigned Premises free and clear of rubbish, debris and litter resulting from its operations at all times, and to keep and maintain all of said premises in a safe, clean, wholesome and sanitary

condition under all applicable federal, state, municipal and other laws, ordinances, rules and regulations. No offensive or refuse matter, nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health, shall ever be permitted to be or remain on or be disposed of in water adjacent to the Leased, Licensed or Assigned Premises, and Lessee shall prevent such material or matter from being or accumulating upon said premises.

Upon the termination of this Agreement, whether by expiration or otherwise, all improvements of Lessee located on the Leased, Licensed or Assigned Premises shall, at the option of City, be removed by Lessee at Lessee's sole cost and expense; and Lessee shall restore the Leased Premises to a smooth graded, unimproved state and restore the Licensed Premises to the condition the same were in immediately prior to the commencement of such removal. City shall give written notice to Lessee of City's election, with respect to removal of the improvements, not later than ninety (90) days prior to the termination of this Agreement. City may so elect for Lessee to remove a portion or portions only of the improvements and, in such case, Lessee shall remove only the portion or portions specified by City in its written notice of election. All pipelines not removed pursuant to City's election shall be abandoned in place in accordance with the conditions specified by the General Manager.

10. *SPECIAL PROVISIONS RELATING TO THE LICENSED PREMISES.*

a. *Installation of Pipelines.* Lessee shall install pipelines underground or beneath the wharf apron at the schematic locations shown on said Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3, and at elevations and locations approved in writing by the General Manager. The pipelines hereby authorized shall be in-

stalled only in accordance with plans and specifications previously submitted to the General Manager of the Harbor Department with the application for this permit and as approved by him. * * * Relocation or alteration of other underground pipelines, and installations of any kind or nature, whether above or below ground, and whether owned by City or by third parties, required in connection with Lessee's installation of its pipelines and facilities shall be at the sole cost and expense of Lessee.

* * *

d. *Use of Lands by City.* City, its successors and assigns, shall have full use and enjoyment of the Licensed Premises, except as to the rights and privileges hereby granted to Lessee.

e. *Permit Not Exclusive.* The license and permit hereby granted for the construction, operation and maintenance of ships' fuel oil-bunkering services by said pipelines shall be exclusive. However, City reserves the right to grant to other persons, firms or corporations licenses and permits to lay, maintain, operate, repair, renew, and remove pipelines other than for ships' fuel-bunkering services.

f. *Alterations.* Lessee shall, at its own cost and expense, alter said pipelines and change the location thereof whenever and as often as City deems it convenient or necessary on account of any construction authorized, permitted or contemplated by City, and Lessee shall commence such alteration or change of location, or both, within thirty (30) days after the receipt of a written notice from City so to do and shall proceed to complete the same with due diligence thereafter; provided, however, that after the original location has been approved by City, the expense of alteration and relocation of a pipeline for the sole convenience of per-

sons other than City and Lessee shall be borne by such others.

• • •

g. *Repairs to Pipelines.* Whenever the pipelines shall suffer failure or incur damage which will cause or permit the escape of the contents therefrom, it shall be the duty of Lessee to immediately make such repairs as will insure the future safe and proper operation of said pipelines and facilities, and Lessee shall make such cleanup and repairs as shall be required by City. Lessee shall also be responsible for the repair or replacement of any property and facilities caused to be damaged by the occurrence of the escape of the contents from the pipelines.

h. *Subject to Encumbrances.* This license and permit is granted subject to any and all existing leases, easements, licenses, permits or other encumbrances, and City reserves the right to grant further permits, licenses, easements, franchises or leases in, over, upon, along or across the Licensed Premises and the Optional Licensed Premises for purposes other than ships' fuel oil-bunkering services. City reserves the right to dedicate the Licensed Premises, the Optional Licensed Premises, or any part thereof, or to grant an easement across said Licensed Premises, Optional Licensed Premises, or any part thereof, for street purposes. Lessee shall not be liable for rental for the immediate area affected to the extent that, during any rental period, it is so prevented from exercising its rights hereunder as to such area. All such further permits, licenses, easements, franchises and leases shall be so located that a minimum of interference with Lessee's use of the premises covered by this Agreement is encountered.

i. *City Not to Incur Expense.* City shall not, at any time or under any circumstances, be required to construct, reconstruct, maintain or repair the pipelines, appliances, attachments, or appurtenances thereto installed by Lessee upon the Leased Premises, the Licensed Premises, the Op-

tional Licensed Premises, the Assigned Premises, or any part thereof, or to incur any expense or obligation or become liable for any damages whatsoever on account thereof except expense, obligation or damage arising from the sole negligence of City, its officers, agents or employees.

11. *INDEMNIFICATION.* Lessee shall indemnify, hold, protect and save harmless the City of Long Beach and any and all of its boards, officers and employees, from and against any and all actions, suits, proceedings, claims and demands, loss, liens, cost, expense and liability, of any kind or nature whatsoever, for injury to or death of persons or damage to property (including property owned by said City), which may be brought, made, filed against, imposed upon or sustained by said City, its boards, officers or employees, and which, in whole or in part, arise from or are attributable to or are caused, directly or indirectly, through negligence or otherwise, by the use of, or operations conducted upon, the Leased Premises, the Licensed Premises, the Optional Licensed Premises, the Assigned Premises or any portions thereof, or all, whether such use or operation be made or performed by Lessee, its officers, agents or employees, or by any person or persons acting with the knowledge and consent, express or implied, of Lessee, except claims and liabilities arising from the sole negligence of City, its officers, agents or employees.

12. *DESTRUCTION OR DAMAGE TO LESSEE'S IMPROVEMENTS.* In the event of destruction or damage to the improvements constructed, erected or installed by Lessee hereunder, by fire or any of the hazards covered by a standard form of fire insurance policy bearing an extended coverage endorsement, or by any other cause, said improvements shall be restored by Lessee, with reasonable diligence, to a condition suitable for Lessee's use; or Lessee, at its option, shall have the right to terminate this Agreement by written notice to City. In the event Lessee exercises its option to terminate this Agreement, or should

Lessee fail to restore said improvements with reasonable diligence, the Leased Premises and pipeline rights of way shall be restored as herein provided in Paragraph 9, and Lessee agrees to surrender all of said Premises to City.

13. *RIGHTS OF WAY AND ENCUMBRANCES.* This license and permit is granted subject to rights of way and entry upon the Leased, Licensed and Assigned Premises for the installation, relocation, removal, operation, and maintenance of sewers, pipelines, conduits and telephone, telegraph, light, heat or power lines, whether underground or overhead, as may from time to time be determined by the Board of Harbor Commissioners, as provided in subsection (f) of Section 229a of the Charter of the City of Long Beach. Said rights of way shall be so located that a minimum of interference with Lessee's use of the Leased, Licensed and Assigned Premises is encountered.

• • •

16. *UTILITY SERVICES.* Lessee shall provide, at its own expense, all utility installations and services required by Lessee upon the Leased Premises, including connections to the nearest gas, sewer, telephone, electric and water lines at points designated by City, and Lessee shall pay, before delinquent, all utility costs and charges required or used by it in connection with its use of the Leased, Licensed and Assigned Premises.

• • •

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures:

[Subscriptions and attachments omitted in printing]

COUNTY OF LOS ANGELES LEASE

LEASE

THIS LEASE Made this day of , 1961, by the County of Los Angeles, hereinafter called "County", and [name of lessee deleted in original], hereinafter called "Lessee," WITNESSETH:

That in consideration of the terms, conditions, and covenants herein contained, to be kept and performed by the parties hereto and the strict, prompt and punctual performance of each of the terms, conditions, and covenants by Lessee on his part agreed to be kept and performed, County by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire, and take from County the following described parcel or parcels of land or water, consisting of a total of 297,500 square feet and situated in the Marina del Rey Small Craft Harbor of the County of Los Angeles, State of California, more particularly described as follows, to-wit: Parcel Number Fourteen (14) more particularly described in Exhibit "A" attached hereto and incorporated herein.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon terms and conditions as follows:

1. DEFINITION OF TERMS

The following words have in this lease the significance attached to them in this paragraph, unless otherwise apparent from the context:

"BOARD" means the Board of Supervisors of the County of Los Angeles.

"COUNTY" means the County of Los Angeles.

"DEPARTMENT" means the Department of Small Craft Harbors of the County of Los Angeles.

"DIRECTOR" means the Director of the Department of Small Craft Harbors of the County of Los Angeles.

The words "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

The word "SECTION" means a section of this lease.

The word "PROPERTY" includes both real and personal property.

The word "SUBLEASE" includes licensee, permittee, concessionaire, assignee or transferee of or from Lessee with respect to any interest in the property demised under this lease.

• • •

2. TERM.

The term of this lease shall be sixty (60) years, commencing upon the eighth (8th) day of June A.D. 1961.

3. PURPOSE OR USE OF PROPERTY.

The leased premises shall be used only and exclusively for anchorage and related uses and for purposes incidental thereto; and for no other purposes whatsoever without the written approval of County; the uses and purposes above listed are set forth to define the maximum contemplated scope of permissible uses and purposes, and their enumeration is not intended to be authorization for any specific use or purpose.

It is also expressly understood that the uses of the said premises which are permitted hereinabove do *not* include the following:

A—Fuel sales

B—Repairs other than minor servicing or owner maintenance

C—Live bait sales

D—Sportfishing or charter boat activity

There shall be no actual construction upon said premises except that required by Sections 5 and 6 hereof, and except that additional construction allowed upon approval of Director pursuant to Section 9 hereof.

The Lessee shall conform to and abide by all rules and regulations relating to the operations herein authorized and shall be subject at all times to the rules and regulations adopted by the Los Angeles County Department of Forester and Fire Warden or the Department, ordinances of the County of Los Angeles, and all Statutes and administrative rules and regulations of the Federal Government and the State of California applicable thereto, and where permits are required for such operations, the same must first be had and obtained from the Los Angeles County Forester and Fire Warden or other regulatory body having jurisdiction thereof before such operations are undertaken.

4. ACTIVE PUBLIC USE.

The ultimate object of this lease is the complete and continuous use of the premises herein demised by and for the benefit of the public, without discrimination as to race or religion, the immediate object being the development and realization of the greatest possible revenue therefrom. It is agreed that said immediate and ultimate objects are consistent and compatible. Accordingly, Lessee covenants and agrees that he will operate said premises fully and continuously to the end that the public may enjoy maximum benefits and County may obtain maximum revenue therefrom.

• • •

5. PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION.

Prior to commencing construction and within one hundred twenty (120) days after the commencement of the term of this lease, for water uses and sanitary facilities required thereby, and one hundred twenty (120) days after the commencement of the term of this lease and for uses other than water uses and sanitary facilities required thereby, Lessee shall file with Department six (6) sets of final plans and specifications for the construction of the following improvements upon the aforesaid premises: anchorage and related

uses the cost of which land and water improvements shall not be less than the total sum of Five hundred seventy thousand and 00/100 Dollars ($570,000.00) in combination with Parcels Eleven (11) and Thirteen (13).

Such final plans and specifications shall conform to the minimum standards of construction and architectural treatment for Marina del Rey Small Craft Harbor as adopted by the Board on January 3, 1961, and shall be subject to approval by Director and the County Engineer. No construction shall begin until said Director and Engineer have approved said final plans and specifications.

No modification of the approved plans and specifications or of said improvements, including landscaping, shall be made by Lessee without the prior approval of said Director and Engineer.

6. REQUIRED CONSTRUCTION SCHEDULE.

Lessee expressly covenants and agrees that within Forty-five (45) days after the approval of the final plans and specifications for water uses and sanitary facilities required thereby as provided for in Section 5 and that within Sixty (60) days after the approval of final plans and specifications for uses other than water uses and sanitary facilities required thereby as provided for in Section 5, Lessee shall in good faith commence construction of the improvements described therein, including required underground laterals for power, light, telephone, television, sewer, water (including fire lines) and gas lines, and landscaping, in accordance with said approved plans and specifications, and shall diligently prosecute such construction and shall complete the same not later than Three hundred (300) days thereafter for water uses and sanitary facilities required thereby and Seven hundred thirty (730) days thereafter for uses other than water uses and sanitary facilities required thereby; provided that any delay in construction due to fire, earth-

quake, war, labor dispute, or other event beyond control of Lessee shall extent the time in which said construction must be completed by the length of time of such delay.

Failure of Lessee to commence said work within said time shall, upon written notice thereof to Lessee by Board, ispo facto effect a forfeiture of this lease and all rights of Lessee thereunder.

• • •

9. ADDITIONAL CONSTRUCTION.

Lessee may, at its own expense, make or construct, or cause to be made or constructed, improvements other than those required by Sections 5 and 6, additions, alterations, repairs, or changes in the leased premises provided such proposed improvements, additions, alterations, repairs, or changes are within the scope of permissible uses set forth in Section 3, and further provided that each specific proposed improvement, addition, alteration, repair, or change must first have the written approval of Director.

• • •

10. LANDSCAPING.

Lessee shall, at its own cost and expense and to the satisfaction of County, install and maintain landscaping upon the demised premises. A general layout of proposed landscaping shall be submitted as part of the plans and specifications for all proposed improvements of the site. This will include the landscaping of all areas between any street and set back lines and such other areas as are necessary to create a pleasing development of the project as a whole. All landscaping plans and layout must have the approval of Director.

• • •

12. GROSS RECEIPTS.

The term "gross receipts" as used in this lease is defined to be all money, cash, receipts, assets, property, or other things of value, including but not limited to, gross charges,

sales, rentals, fees, and commissions made or earned, and all gross sums received or earned by Lessee, his assignees, sublessees, licensees, permittees, or concessionaires, whether collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted, or performed, in whole or in part, on the premises, including but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares, or merchandise; less sales and excise taxes applicable thereto, required to be collected by Lessee, his assignees, sublessees, licensees, and permittees in connection with the rendering or supplying of services or goods, wares, or merchandise.

There shall be no deduction from gross receipts for any overhead or cost or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, interest, debt amortization, discount, collection, credit card and bad debt charges, insurance, and taxes, except as specifically provided for herein.

Gross receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross receipts, however, shall not include Federal, State, Municipal or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by Lessee to a governmental agency, accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

13. SQUARE FOOT AND HOLDING RENTALS.

Lessee shall pay to County an annual square foot rental in twelve (12) equal monthly installments. Said installments shall be due and payable in advance upon the first

day of each calendar month, starting with the calendar month next succeeding the date of substantial completion of the improvements required to be constructed pursuant to Sections 5 and 6, or starting with the calendar month next succeeding the commencement of use by the public of any of the improvements required to be constructed pursuant to Sections 5 and 6 or of any portion of the premises herein demised.

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The aforesaid annual square foot rental for the whole of the premises herein demised shall be eight and one-half cents ($0.085) per square foot of water area and eight and one-half cents ($0.085) per square foot of land area, or the total of Twenty-five thousand two hundred eighty-seven and 50/100 Dollars ($25,287.50).

Prior to the start of square foot rental payments as in this section above provided for, Lessee shall pay to County each month in advance a "holding rental" consisting of one-third of the contemplated total monthly installment of square foot rental, starting on the eighth (8th) day of June, 1961. In the event of the start of proportionate square foot rentals under a program of progressive completion, as in this section above provided for, the "holding rental" shall be abated for that portion of the completed improvements and adjoining area thus made subject to square foot rental.

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14. PERCENTAGE RENTALS.

The square foot rental agreed upon in Section 13 is a minimum rental, payable in lawful money of the United States. The money received as square foot rental for any calendar month shall be applied to the payment of the percentage rental for said calendar month as provided for in this Section 14.

Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall pay to County a sum in like money, less the amount of the monthly

installment of annual square foot rental previously paid for said calendar month under Section 13, and during the first five years of the term hereof, also less the credit for improvements hereinafter in this Section 14 provided for, equal to the total of the following for said previous calendar month:

(a) TWENTY Per Cent (20%) of gross receipts from the rental of boat slips, anchorage tie-ups, or storage areas;

(b) TWENTY-FIVE Per Cent (25%) of gross receipts from the launching and retrieving of small boats;

(c) TWENTY-FIVE Per Cent (25%) of gross receipts from the dry storage of boats;

(d) SIX Per Cent (6%) of gross receipts from sales of used boats, ship chandlery supplies, fishing tackle, paints, varnishes, and similar commodities, and from commissions from the sale of new boats;

(e) SIX Per Cent (6%) of gross receipts from boat haulout, repair, painting, and similar activities;

(f) TWENTY Per Cent (20%) of gross receipts from insurance sales or boat sale brokerages;

(g) TWO Cents ($0.02) per each gallon of gasoline sold;

(h) ONE AND ONE-HALF Cents ($0.015) per each gal. of diesel fuel sold;

(i) THREE Cents ($0.03) per each gal. of mixed fuel sold;

(j) FIVE Per Cent (5%) of gross receipts from sale of petroleum or fuel products other than those covered by subparagraphs (g), (h), and (i) above;

(k) FIVE Per Cent (5%) of gross receipts from the sale of food or food products and alcoholic or other beverages served on the demised premises or prepared on the premises and served off the premises;

(l) SIX Per Cent (6%) of gross receipts from the sale of packaged liquor;

(m) TEN Per Cent (10%) of gross receipts from the sale of alcoholic or other beverages prepared and served on the demised premises or prepared on the premises and served off the premises when no food or food products are prepared and served therewith;

(n) FIFTEEN Per Cent (15%) of gross receipts from club initiation fees and club dues;

(o) FIFTEEN Per Cent (15%) of gross receipts from the rental of hotel rooms, guest rooms, meeting rooms, or other similar space;

(p) TWENTY Per Cent (20%) of gross receipts from rentals or other fees charged for use of trailer-cabana sites, motels, boatels, and cabanas;

(q) TWENTY Per Cent (20%) of gross receipts from parking fees;

(r) SIX Per Cent (6%) of gross receipts from the operation of sports fishing boats;

(s) SIX Per Cent (6%) of gross receipts from miscellaneous activities such as sportswear shops, beauty shops, specialty food shops, and gift shops;

(t) FIVE Per Cent (5%) of gross receipts from coin vending machines;

(u) TWENTY-FIVE Per Cent (25%) of gross receipts received by Lessee from the telephone company as compensation for pay telephones located on the leasehold;

(v) TWENTY Per Cent (20%) of gross receipts from any and all service charges or labor charges;

(w) TEN Per Cent (10%) of gross receipts from apartment rentals;

(x) FIVE Per Cent (5%) of gross receipts from all other activities carried on on said premises.

During the first five (5) years of the term hereof, Lessee shall be allowed a credit each calendar month upon the payment of the percentage rental hereinbefore in this Section 14 required, in the amount of one-half of the total of said percentage rental due hereunder for said calendar month in excess of the minimum square foot rental installment previously paid for said calendar month; the total of said monthly credits shall not exceed the minimum required money expenditure for improvements specified and required to be constructed pursuant to Section 5 hereof.

If the total of the percentages of gross receipts agreed to be paid by Lessee for any calendar year exceeds the sum of the Square Foot Rental, but is less than the total of monthly payments actually made by the Lessee for said calendar year, Lessee shall be allowed credit at the end of said calendar year for the difference between the said total of percentages agreed to be paid and said total of payments actually made.

If any of the items, services, goods or facilities mentioned in subparagraphs (a) through (x) of this paragraph be provided by Lessee or its sublessees, assignees, licensees, concessionaires, or permittees, without the usual charges therefor according to the price list or schedule provided for in Section 16, or if said usual charge be not collected in full, the proper amount thereof shall nevertheless be included in the gross receipts reported by Lessee and its sublessees, assignees, licensees, concessionaires, and permittees, and the applicable percentage thereof paid to County.

15. RENT RENEGOTIATION AND ARBITRATION.

The square foot and percentage rentals hereinbefore provided for shall apply to and be in effect for the first five (5) years of the term hereof. The square foot and percentage rentals for the remainder of said term shall,

be determined by renegotiation and arbitration, as hereinafter provided, without limit as to amount, except that at all times during the term of this lease the total rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area.

The rentals for the remainder of said term shall be readjusted as follows for each succeeding period of ten (10) years;

Such rentals shall be readjusted by Lessee and County, in accordance with standards of and for fair market value hereinafter set forth, at some time not more than nine (9) months and not less than six (6) months before the beginning of each such ten-year period; in the event Lessee and County cannot agree upon the readjustment of rentals, the same shall be determined by a board of three (3) real estate appraisers, one of whom shall be appointed by County, one by Lessee, and the third by the two (2) appraisers so appointed.

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The board of real estate appraisers shall, immediately upon the appointment of its members, enter upon the discharge of its duties and determine the amount of readjusted rentals and notify the parties thereof in writing within sixty (60) days after its appointment. A majority of the real estate appraisers who agree thereto may readjust such rentals, such readjustment to be based upon a determination of the fair market value of this lease, taking into consideration the uses permitted thereunder and all of

its terms, conditions, and restrictions, franchise value, earning power, and all of the factors and data relating to such value required or proper to be considered in determining the fair market value of leaseholds under the laws of eminent domain in the State of California; also provided that at all times during the term of this lease the total of such rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area. * * *

18. DISPOSITION OF INSTALLATIONS OR IMPROVEMENTS.

Title to all structures, buildings, or improvements constructed by Lessee upon the demised premises, and all alterations, additions or betterments thereto, shall remain in Lessee until termination of this lease; and upon such termination, whether by expiration of the term hereof, cancellation for good cause, forfeiture, or otherwise, title to said structures, buildings, improvements, and all alterations, additions, or betterments thereto, and all improvements made to or upon said premises, shall, at the option of County, vest in County without compensation therefor to Lessee, and said structures, buildings, and improvements shall remain upon and be surrendered with the premises as part thereof.

However, County may require Lessee, prior to the expiration of the term of this lease, or any sooner termination of this lease, to remove, at the sole cost and expense of Les-

see, all works, structures, and improvements of any kind whatsoever placed or maintained on said premises, whether below, on, or above the ground by Lessee or others, including, but not limited to, wharves, piers, docks, slips, bulkheads, seawalls, piling, channels, concrete foundations, structures, and buildings; and Lessee shall, upon the expiration of the term of this lease or upon any sooner termination of this lease, immediately restore, and quit, and peacefully surrender possession of, said premises to County in at least as good and usable a condition, acceptable to the Director, as the same were in at the time of first occupation thereof by Lessee or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills, or humps. Should Lessee fail to so remove said structures, buildings, and improvements and restore said premises, County may sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for any cost or expense thereof in excess of any consideration received by County as a result of such sale, removal, or demolition.

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Title to all utility lines, switchboards, transformer vaults, and all other service facilities constructed or installed by Lessee upon the demised premises shall vest in County upon construction or installation.

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26. INDEMNITY CLAUSE AND CASUALTY INSURANCE.

Lessee shall at all times relieve, indemnify, protect and save harmless County and its Boards, officers, agents, and employees from any and all claims and liability, including expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County, or any of its officers, agents, or employees,

that may in whole or in part arise from or be caused by (a) the operation, maintenance, use, or occupation of the herein demised premises by Lessee, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, or permittees, or (c) the failure of Lessee to observe or abide by any of the terms and conditions of this lease or any applicable law, ordinance, rule, or regulation; the obligation of Lessee to so relieve, indemnify, protect and save harmless County, and each of its Boards, officers, and employees, shall continue during any periods of occupancy of or holding over by Lessee, its agents, officers, employees, or permittees, beyond the expiration or other termination of this lease.

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35. MAINTENANCE OF PREMISES.

Lessee shall give prompt notice to County of any fire or damage that may occur from any cause whatsoever. Lessee shall, to the satisfaction of Director, keep and maintain the leased premises and all improvements of any kind which may be erected, installed, or made thereon by Lessee in good and substantial repair and condition, including painting, and shall make all necessary repairs and alterations thereto.

County shall not at any time be required to make any improvements or repairs whatsoever except that County may at its sole discretion do any necessary dredging, filling, grading, slope protecting, construction of sea walls, or repair of water system, sewer facilities, roads, or other County facilities in order to protect the leased premises or the adjoining premises.

Lessee expressly agrees to maintain the leasehold in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Director and in compliance with all applicable law. Lessee further agrees to provide proper containers for trash and garbage and to keep the demised premises, both land and water areas thereof, free and clear

of rubbish and litter. County shall have the right to enter upon and inspect the said premises at any time for cleanliness and safety.

36. REPAIRS BY COUNTY.

Lessee shall from time to time make any and all necessary repairs to or replacement of any equipment, structure, structures, or other physical improvements, upon the demised premises, in order to comply with any and all regulations, laws, or ordinances of the State of California, County of Los Angeles, City of Los Angeles, or other governmental body, which may be applicable.

If Lessee fails to make any such repairs or replacements as required, County may notify Lessee of said default in writing, and should Lessee fail to cure said default and make said repairs or replacements within a reasonable time as established by County, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, materials, and equipment, shall be charged against Lessee and shall be paid to County by Lessee.

37. SPECIAL SERVICES.

In addition to the rental charges as herein provided, Lessee shall pay all service charges for furnishing water, power, sewage disposal, light, telephone service, garbage, and trash collection, and all other utilities, to said premises.

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41. RULES AND REGULATIONS.

Leases shall abide by all applicable rules, regulations, resolutions, ordinances, and statutes of the County of Los Angeles, the City of Los Angeles, and the State of California, or other governmental body, where applicable, respecting the use, operation, maintenance, repair, or improvement of the leased premises and equipment, and shall

pay for any and all licenses required in connection with the use, operation, maintenance, repair, or improvement of the leased premises.

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[Subscriptions omitted in original]

STUDY BY
URBAN PROPERTY RESEARCH COMPANY

Study of Land Rental Rates and Returns
Being Received on Other High Grade Investments for
State of California States Land Commission

[Letterhead]

January 31, 1975

State of California
State Lands Commission
1807 13th Street
Sacramento, California 95814

Attention: Leslie H. Grimes

SUBJECT: Study of Land Rental Rates

Gentlemen:

In accordance with your authorization, I have prepared a study involving review and analysis of rental rates being secured on commercial, industrial and marina land. The study includes various recommendations together with the reasoning upon which these recommendations are predicated.

Also considered in the study is an analysis and comparison of rates of return being received from Aaa bonds and from land leases.

Respectfully Submitted,

URBAN PROPERTY
RESEARCH COMPANY

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

TWC/jn

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. On commercial and industrial land leases where the annual rental is established by a fair market value appraisal to which is applied a rate of return, it is recommended that the annual rental rate of return be 8%.

II. Analysis and comparison of the difference between land lease rates and interest rates being secured on Aaa bonds indicate that the composition of the rate of return is different, and there is not necessarily a significant correlation between the two. It is recommended, therefore, that interest rates on Aaa bonds not be used to determine a rental rate for land leases.

III. It is recommended that serious consideration be given to applying the percentage of gross sales to establish the rental rate for large marina lands and that a simplified method be established using county assessor data to estimate land rents for small "Mom and Pop" marinas.

IV. It is recommended that a review of current rental rates be made every two to four years and that provisions be made in leases for increasing annual rentals either by reevaluation of the property or by tieing the rent to some governmental index.

CERTIFICATION

The undersigned does hereby certify that in this study:

1. I have no personal interest or bias with respect to the subject matter of this report or the parties involved.

2. To the best of my knowledge and belief the statement of fact contained in this study upon which the analyses, opinions and conclusions expressed are based are true and correct.

3. No one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate that are set forth in this report.

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

SCOPE OF STUDY

The purpose of this study is to aid the staff of the State Lands Commission in estimating a reasonable rental rate or rate of return to be applied to land leases involving state lands under their jurisdiction.

Primary emphasis has been on an investigation of market data involving land leases in both the public and private sector of the economy. The majority of the leases, however, are of lands owned by public agencies such as port districts, cities and the State of California since they have more land available for lease than private corporations. Also included in the report is market data relating to percentage leases with regard to marina land. This data can be related to marina land leases in the Sacramento-San Joaquin Delta and at Lake Tahoe.

A comparison of yields being earned on high grade corporate and governmental bonds has also been analyzed and an attempt made to correlate the return on this type of investment with those being received from land leases. Included in this section are some of the current economic theories relating to the real value of money, the effect of inflation and risk. While these theories yield some light on a proper rate of return for a given type investment and tend to explain the thinking of investors in the money market, it is difficult to directly correlate this data to a fair rate of return for leased lands.

The market and economic data investigated has been correlated and analyzed and recommendations made as to various approaches that are applicable to developing reasonable land rental rates and means of reviewing and updating the data.

ANALYSIS OF CURRENT LAND LEASES

Major emphasis in this study has been to collect and analyze market data relating to current land leases by both public agencies and private companies. In addition, the real estate representatives handling these transactions were in-